



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0133; FRL-9990-48-Region 9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutant requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. The intended effect is to delete these rules to make the SIP consistent with the Clean Air Act. The EPA is also taking final action to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2018-0133. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business information or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, Rules Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3073, gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On August 27, 2018 (83 FR 43576), pursuant to section 110(k)(6) of the Clean Air Act (CAA or “Act”), the EPA proposed to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutant requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA proposed to delete the rules based on the Agency’s determination that

the rules were approved in error and that the continued presence of these rules in the SIP is potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. Table 1 in the proposed rule lists the specific rules that were proposed for deletion.¹ In our August 27, 2018 proposed rule, the EPA also proposed to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.²

One such correction includes the reinstatement in the applicable SIP of the following rules that were previously incorporated by reference but that were erroneously deleted: Lake County AQMD Table I “Agencies Designated to Issue Agricultural Burning Permits”, Table II “Daily Quota of Agricultural Material that May Be Burned by Watershed“, Table III “Guides for Estimating Dry Weights of Several California Fuel Types“, and Table IV “Particulate Matter Emissions Standard for Process Units and Process Equipment” (all adopted on November 22, 1976 and submitted to the EPA on February 10, 1977), and Nevada County APCD Rule 404 “Upset Conditions, Breakdown or Scheduled Maintenance” (excluding paragraph (D) (adopted on May 7, 1979 and submitted to the EPA on October 15, 1979).

Another such correction is the incorporation by reference of the following rules that were previously approved but not incorporated by reference: Eastern Kern APCD Rules 108 “Stack Monitoring” and 417 “Agricultural and Prescribed Burning” (both amended on July 24, 2003 and submitted to the EPA on November 4, 2003), El Dorado County AQMD Rule 1000.1 “Emission Statement Waiver” (adopted on September 21, 1992 and submitted to the EPA on November 12, 1992), and Northern Sierra AQMD Rules 212 “Process Weight Table” and 213 “Storage of Gasoline Products” (adopted on September 11, 1991 and submitted to the EPA on October 28,

¹ See 83 FR 43576, at 43577-43579.

² See 83 FR 43576, at 43582-43585.

1996). Other types of corrections include deletion of rules that were previously disapproved but erroneously incorporated by reference, deletion of rules that were previously deleted but for which the deletion was not codified, and other revisions to address errors in amendatory instructions and publishing errors, and to clarify the documents that were previously approved.

An explanation of the relevant CAA requirements and the rationale for each of the proposed deletions and corrections were provided in the proposed rule and will not be restated here.

II. Public Comments and EPA Responses

The EPA received four comments on the proposal. The comments raised issues that are outside of the scope of this rulemaking, including forest management, wildfire suppression, the Cross-State Air Pollution Rule, and California motor vehicle emission standards. None of these comments concerned any of the specific issues raised in the proposal, nor did they address the EPA's rationale for the proposed deletions and corrections. Therefore, the EPA is not responding to the comments and is finalizing the action as proposed. All the comments received are included in the docket for this action.

III. EPA Action

Under CAA section 110(k)(6), the EPA is taking final action to delete the rules listed in Table 1 of the August 27, 2018 proposed rule and any earlier versions of these rules from the corresponding air pollution control district portions of the California SIP. The EPA is taking this action based on our determination that the rules were previously approved into the applicable California SIP in error.

We are also taking final action to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in detail in the August 27, 2018 proposed rule and summarized above.

IV. Incorporation by Reference

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Eastern Kern APCD rules, El Dorado County AQMD rule, and Northern Sierra AQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely corrects errors in previous rulemakings on SIP revisions and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 22, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F - California

2. Section 52.220 is amended by:

- a. Adding paragraphs (b)(1)(iii), (b)(13)(ii), (b)(14)(iii), (b)(15)(ii), (b)(16) through (21), (c)(6)(iii)(D), (c)(6)(v)(D), (c)(6)(vi)(F), (c)(6)(viii)(C), (c)(6)(xi)(E), (c)(6)(xvi)(E), (c)(6)(xvii)(C) and (D), (c)(6)(xxi)(B), (c)(6)(xxv) and (xxvi), (c)(22)(i)(A)(7), (c)(26)(ii)(E), (c)(26)(viii)(E), (c)(26)(xvi)(G), (c)(27)(vii)(F), (c)(28)(iv)(D), (c)(31)(i)(J), (c)(35)(ix)(D), (c)(39)(x)(F), (c)(42)(i)(G), (c)(47)(i)(H), (c)(51)(xiv)(F), (c)(58)(iii)(D), (c)(89)(iii)(F), (c)(89)(vi)(C), (c)(93)(iii)(F), (c)(93)(iv)(G), (c)(124)(vi)(D), (c)(124)(viii)(D), (c)(124)(ix)(E), (c)(124)(x)(D), (c)(159)(iii)(I), (c)(164)(i)(B)(6), (c)(168)(i)(A)(10), (c)(168)(i)(B)(2), (c)(190)(i)(C)(2), (c)(246)(i)(A)(6), and (c)(321)(i)(A);
- b. Redesignating paragraph (c)(27)(viii)(F) as paragraph (c)(27)(vii)(G);

- c. Redesignating paragraph (c)(280)(i)(C)(2) as paragraph (c)(280)(i)(B)(2);
- d. Removing and reserving paragraphs (c)(278)(i)(A)(3), (c)(284)(i)(A)(5), and (c)(350)(i)(A)(2); and
- e. Revising paragraphs (c)(37)(iv)(D), (c)(52)(xii)(B), (c)(205)(i)(A)(1), and (c)(423).

The additions and revisions read as follows:

§ 52.220 Identification of plan - in part.

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(b) * * *

(1) * * *

(iii) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Part V, Paragraph 4.A.

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(13) * * *

(ii) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Rules 52 and 53.

(14) * * *

(iii) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Rule 117.

(15) * * *

(ii) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Section 2-1.

(16) Bay Area Air Quality Management District.

(i) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Division 11.

(17) Riverside County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Rules 51 and 106.

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Regulation V.

(18) Monterey-Santa Cruz County Unified Air Pollution Control District.

(i) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Rule 402.

(19) San Benito County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 403.

(20) Del Norte County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Regulation IV, introductory paragraph.

(21) Humboldt County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in this paragraph (b) and now deleted without replacement, Rule 51.

(c) * * *

(6) * * *

(iii) * * *

(D) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 4.5 and 4.6.

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(v) * * *

(D) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 78 and 79.

(vi) * * *

(F) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 419 and 420.

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(viii) * * *

(C) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 3:2, 3:3, 3:4, 3:5 and 4:2.

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(xi) * * *

(E) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 3:2 and 3:6.

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(xvi) * * *

(E) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 52, 85, 91 and 96.

(xvii) * * *

(C) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rule 51.

(D) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Regulation VI.

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(xxi) * * *

(B) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rule 51.

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(xxv) Amador County Air Pollution Control District.

(A) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Rules 5 and 6.

(xxvi) Trinity County Air Pollution Control District.

(A) Previously approved on September 22, 1972 in this paragraph (c)(6) and now deleted without replacement, Regulation IV, introductory paragraph, and Rules 56, 62, 67 and 68.

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(22) * * *

(i) * * *

(A) * * *

(7) Previously approved on May 11, 1977 in paragraph (c)(22)(i)(A)(6) of this section and now deleted without replacement, Division 11, Section 11101.

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(26) * * *

(ii) * * *

(E) Previously approved on May 11, 1977 in paragraph (c)(26)(ii)(C) of this section and now deleted without replacement, Regulation 8.

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(viii) * * *

(E) Previously approved on August 22, 1977 in paragraph (c)(26)(viii)(A) of this section and now deleted without replacement, Rule 205.

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(xvi) * * *

(G) Previously approved on June 14, 1978 in paragraph (c)(26)(xvi)(B) of this section and now deleted without replacement, Rules 701, 702, 704, 711, 712, 713, 714, 715 and 716.

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(27) * * *

(vii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement, Rule 711.

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(28) * * *

(iv) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(28)(iv)(A) of this section and now deleted without replacement, Rules 205 and 603.

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(31) * * *

(i) * * *

(J) Previously approved on June 6, 1977 in paragraph (c)(31)(i)(B) of this section and now deleted without replacement, Rule 402.

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(35) * * *

(ix) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(35)(ix)(C) of this section and now deleted without replacement, Rules 340, 620, 630, 640 and 650.

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(37) * * *

(iv) * * *

(D) Previously approved on August 4, 1978 and now deleted without replacement Rules 300, 800, 1600, 1601, 1610 to 1612, 1620, 1700 to 1701, 1710 to 1714, 1720 to 1725, and 1730 to 1736.

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(39) * * *

(x) * * *

(F) Previously approved on September 14, 1978 in paragraph (c)(39)(x)(A) of this section and now deleted without replacement, Rules 700 and 703 (paragraphs (E) and (I)).

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(42) * * *

(i) * * *

(G) Previously approved on August 11, 1978 in paragraph (c)(42)(i)(A) of this section and now deleted without replacement, Rule 513.

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(47) * * *

(i) * * *

(H) Previously approved on May 9, 1980 in paragraph (c)(47)(i)(A) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District (Riverside County), Rule 1231.

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(51) * * *

(xiv) * * *

(F) Previously approved on May 18, 1981 in paragraph (c)(51)(xiv)(A) of this section and now deleted without replacement, Rule 706.

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(52) * * *

(xii) * * *

(B) Previously approved on May 18, 1981 in paragraph (c)(52)(xii)(A) of this section and now deleted without replacement, Rule 404 (paragraph (D)).

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(58) * * *

(iii) * * *

(D) Previously approved on January 27, 1981 in paragraph (c)(58)(iii)(A) of this section and now deleted without replacement, Rule 617.

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(89) * * *

(iii) * * *

(F) Previously approved on April 12, 1982 in paragraph (c)(89)(iii)(B) of this section and now deleted without replacement, Rules 9.7 and 9.8.

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(vi) * * *

(C) Previously approved on April 13, 1982 in paragraph (c)(89)(vi)(A) of this section and now deleted without replacement, Section 1602.

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(93) * * *

(iii) * * *

(F) Previously approved on April 23, 1982 in paragraph (c)(93)(iii)(A) of this section and now deleted without replacement, Rules 516 (paragraph (C)), 703 and 710.

(iv) * * *

(G) Previously approved on April 23, 1982 in paragraph (c)(93)(iv)(A) of this section and now deleted without replacement, Rules 516 (paragraph (C)), 703 and 710.

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(124) * * *

(vi) * * *

(D) Previously approved on November 10, 1982 in paragraph (c)(124)(vi)(A) of this section and now deleted without replacement, Rule 620.

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(viii) * * *

(D) Previously approved on November 10, 1982 in paragraph (c)(124)(viii)(A) of this section and now deleted without replacement, Rule 620.

(ix) * * *

(E) Previously approved on November 10, 1982 in paragraph (c)(124)(ix)(A) of this section and now deleted without replacement, Rule 620.

(x) * * *

(D) Previously approved on November 10, 1982 in paragraph (c)(124)(x)(A) of this section and now deleted without replacement, Rule 620.

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(159) * * *

(iii) * * *

(I) Previously approved on July 13, 1987 in paragraph (c)(159)(iii)(A) of this section and now deleted without replacement, Rule 208.

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(164) * * *

(i) * * *

(B) * * *

(6) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(B)(I) of this section and now deleted without replacement, Rules 600 and 610.

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(168) * * *

(i) * * *

(A) * * *

(10) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(I) of this section and now deleted without replacement, Rule 619.

(B) * * *

(2) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(B)(I) of this section and now deleted without replacement, Section 1701.Q.

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(190) * * *

(i) * * *

(C) * * *

(2) Rule 1000.1, "Emission Statement Waiver," adopted on September 21, 1992.

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(205) * * *

(i) * * *

(A) * * *

(I) Emissions inventory, 15% Rate-of-Progress plan, Post-1996 Rate-of-Progress plan, modeling, and ozone attainment demonstration, as contained in the "Rate-of-Progress and

Attainment Demonstration Plans for the Kern County Air Pollution Control District,” adopted on December 1, 1994.

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(246) * * *

(i) * * *

(A) * * *

(6) Rules 212, “Process Weight Table,” and 213, “Storage of Gasoline Products,” adopted on September 11, 1991.

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(321) * * *

(i) * * *

(A) Kern County Air Pollution Control District.

(I) Rules 108, “Stack Monitoring,” and 417, “Agricultural and Prescribed Burning,” amended on July 24, 2003.

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(423) New and amended regulations for the following APCDs were submitted on September 21, 2012, by the Governor’s designee.

(i) *Incorporation by reference.* (A) Placer County Air Pollution Control District

(1) Rule 301, “Nonagricultural Burning Smoke Management,” amended on February 9, 2012.

(2) Rule 302, “Agricultural Waste Burning Smoke Management,” amended on February 9, 2012.

(3) Rule 303, “Prescribed Burning Smoke Management,” amended on February 9, 2012.

(4) Rule 304, “Land Development Burning Smoke Management,” amended on February 9, 2012.

(5) Rule 305, "Residential Allowable Burning," amended on February 9, 2012.

(6) Rule 306, "Open Burning of Nonindustrial Wood Waste at Designated Disposal Sites," amended on February 9, 2012.

(7) Rule 233, "Biomass Boilers," amended on June 14, 2012.

(B) Sacramento Metropolitan Air Quality Management District.

(1) Rule 417, "Wood Burning Appliances," adopted on October 26, 2006.

(2) Rule 421, "Mandatory Episodic Curtailment of Wood and Other Solid Fuel Burning (except section 402)," amended on September 24, 2009.

(C) South Coast Air Quality Management District.

(1) Rule 461, "Gasoline Transfer and Dispensing," amended on April 6, 2012.

(D) Antelope Valley Air Quality Management District.

(1) Rule 107, "Certification of Submission and Emission Statements," adopted on May 15, 2012.

(2) Rule 1151, "Motor Vehicle and Mobile Equipment Coating Operations," amended on June 19, 2012.

(E) Santa Barbara County Air Pollution Control District.

(1) Rule 102, "Definitions" amended on June 21, 2012.

(2) Rule 353, "Adhesives and Sealants," revised on June 21, 2012.

(3) Rule 321, "Solvent Cleaning Machines and Solvent Cleaning," revised on June 21, 2012.

(4) Rule 330, "Surface Coating of Metal Parts and Products," revised on June 21, 2012.

(5) Rule 349, "Polyester Resin Operations," revised on June 21, 2012.

(F) Feather River Air Quality Management District.

(1) Rule 10.1, "New Source Review," as amended on February 6, 2012.

(G) Butte County Air Quality Management District.

(I) Rule 300, “Open Burning Requirements, Prohibitions and Exemptions,” amended on February 24, 2011.

(2) Previously approved on July 8, 2015 in paragraph (c)(423)(i)(G)(I) of this section and now deleted with replacement in paragraph (c)(474)(i)(C)(I), Rule 300, “Open Burning Requirements, Prohibitions and Exemptions,” approved on February 24, 2011.

(ii) *Additional material*—(A) *Sacramento Metropolitan Air Quality Management District*. (I) Rule 421, “Mandatory Episodic Curtailment of Wood and Other Solid Fuel Burning,” Financial Hardship Exemption Decision Tree, dated December 12, 2007.

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§ 52.273 [Amended]

3. Section 52.273 is amended by redesignating paragraph (a)(6)(ii)(D) as paragraph (a)(19)(iii).

[FR Doc. 2019-18601 Filed: 8/28/2019 8:45 am; Publication Date: 8/29/2019]